

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FISH AND GAME

Call to Order: By **CHAIRMAN MIKE SPRAGUE**, on February 18, 2003 at 3:00 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. Ken (Kim) Hansen (D)
Sen. Dale Mahlum (R)
Sen. Debbie Shea (D)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Trudi Schmidt (D)

Members Absent: None.

Staff Present: Jane M. Hayden, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: **SB 253, 2/18/2003**
Executive Action: **SB 184, SB 208, SB 250,
SB 253, SB 287**

HEARING ON SB 253

Sponsor: **SENATOR JIM ELLIOTT, SD 36**

Proponents: **Rob Cunningham**, Fishing Outfitters Association of Montana
Jean Johnson, Montana Outfitters Association
Chris Smith, Chief of Staff, Department of Fish, Wildlife, and Parks (FWP)

Opponents: **None.**

Opening Statement by Sponsor:

SENATOR JIM ELLIOTT, SD 36, Trout Creek, testified that SB 253 was a very simple bill brought about by a constituent who sells fishing licenses, who explained that out-of-staters have to buy a fishing license every two days, and it is an inconvenience. As a courtesy and convenience, would it be possible to be able to sell nonresidents a ten-day license, if they were going to stay a couple of weeks in Montana. Originally, the cost of this ten-day license was going to be \$33, but the cost has been amended to \$43.50 to make it revenue neutral.

Proponents' Testimony:**EXHIBIT (fis36d01)**

Chris Smith, Chief of Staff, Department of Fish, Wildlife, and Parks (FWP), testified that presently, when a nonresident angler comes to fish in Montana, they have only two choices, one is to buy a season license for \$67, and the second is to buy a two-day license for \$15, and they can purchase as many subsequent two-day licenses as they need. FWP is offering an amendment that would result in a revenue neutral bill. One issue, concerning how the money raised is distributed, is in the amendment. This change puts \$3.50 of the \$43.50 collected into a sub-account for Fishing Access Sites (FAS). Less cash would flow into the General License Account, and more into the FAS Account so it would come out ahead. The FAS Account needs more funding to address noxious weed issues.

Chris Smith stated that the Table at the bottom of Exhibit 1 compares the costs of fishing licenses from other western states. Presently, buying eight 2-day angler licenses in Montana would cost the same as the annual license of \$67. SB 253 would provide some savings to individuals who are going to fish more than four to six days, but would not be here for the entire fishing season. Provided that SB 253 is amended so it would be revenue neutral, FWP thinks it would be a customer service to anglers. One change relative to the amendment of SB 253 is on Page 1, Line 16, where the license would be for ten calendar days, FWP would like it to be amended to ten consecutive days instead. FWP supports the passage of SB 253 with these amendments.

Jean Johnson, Executive Director, Montana Outfitter and Guides Association, testified that their Association liked the idea of the convenience of having a ten-day nonresident fishing license. Frankly, the Association liked the initial proposed cost of \$33, too.

Rob Cunningham, Fishing Outfitters Association, testified that their Association has fewer nonresidents coming to use their services, but those that do, are staying longer. SB 253 gives them a chance to stay longer without spending so much money on licenses. Our Association also approves the higher percentage of the money going to the Fishing Access Sites (FAS). According to our Association's statistics, these nonresident anglers spend an average of \$270 per day. Please pass SB 253 with the amendment.

Opponents' Testimony: None given.

Informational Testimony: None given.

Questions from Committee Members and Responses:

SENATOR DEBBIE SHEA asked **SENATOR JIM ELLIOTT** what would be the difference between calendar days and consecutive days. **SENATOR ELLIOTT** stated that it was recommended by the Department (FWP).

SENATOR MIKE SPRAGUE asked **Chris Smith** if the concern was having someone, for example in Idaho, that would come fish on Wednesday, leave, come back and fish on Friday, stay Saturday, leave, come back and fish on Wednesday, and use the calendar days to use up their ten days. **Chris Smith** responded that it was exactly their concern, and has had anglers even on the two-day licenses wanting to split up their two days. We do not want anglers to ask for ten days parceled throughout the fishing season. **Mr. Smith** explained that when the anglers buy their licenses, they designate which consecutive dates they want, but FWP wants it in a ten-day block, not scattered throughout the calendar.

Closing by Sponsor:

CHAIRMAN MIKE SPRAGUE asked **SENATOR JIM ELLIOTT** if he would like to close, and **SENATOR ELLIOTT** closed by simply saying, "You bet."

EXECUTIVE ACTION ON SB 253

Motion/Vote: **SENATOR DALE MAHLUM** moved that SB 253 BE AMENDED. Motion PASSED 10-0.

Motion: **SENATOR JOE TROPILA** moved that SB 253 DO PASS AS AMENDED. Motion PASSED 10-0.

EXECUTIVE ACTION ON SB 184

Motion: SENATOR DAN MCGEE moved that SB 184 BE TAKEN OFF THE TABLE AND OFFERED AN AMENDMENT TO SB 184. Motion PASSED 10-0.

Motion: SENATOR DAN MCGEE moved that SB 184 BE AMENDED.

Motion: SENATOR DAN MCGEE moved that SB 184 DO PASS AS AMENDED.

SENATOR DAN MCGEE asked Mary Vandembosch to explain the amendments to SB 184. Ms. Vandembosch explained that the first amendment requires the sheriff to conduct a background check on the concealed weapon holder every four years after the date of issuance of the permit as long as Federal law requires it. There is also a small change on Page 2, Line 13, where it states that a person can demonstrate their familiarity with a firearm by completion of a hunter education course, it deletes the reference to the hunter education course, and instead substitutes a safety course conducted by the Department of Fish, Wildlife, and Parks.

SENATOR JOE TROPILA asked SENATOR MCGEE if this would cost the counties more money than it does now. SENATOR MCGEE responded that it is the same frequency that they are doing it now. SENATOR TROPILA said he knew that, but they do not always require a background check. Does it require more money to do the background checks. SENATOR MIKE SPRAGUE stated that to his knowledge they had to do the background check to see that a person was currently legal. Mary Vandembosch stated that the current law does require them to renew every four years. Federal law does require a background check, so it may be assumed that Montana also requires one. SENATOR MCGEE stated that he did not know for sure about Montana's requirements for a background check.

SENATOR DEBBIE SHEA asked SENATOR MCGEE if the handgun safety course has to be taken every four years as well. SENATOR MCGEE responded that it is required just with the initial permit.

SENATOR MCGEE explained the second amendment to SB 184. It makes the renewal every eight years instead of the current every four years, and that is all, is it not. Mary Vandembosch responded that is what it does, and the only other change is on Page 2, Lines 5 through 10, where it says that the sheriff has to deny a renewal for cause, and is treated the same as if it were a permit. So every place in Subsection 2, where it talks about denying a permit, these amendments insert "renewal" for "permit."

SENATOR MIKE SPRAGUE reminded the Committee that SB 184 was going for a lifetime permit, and now it is down to eight years. **SENATOR JOE TROPILA** asked **SENATOR SPRAGUE** if it would be feasible to have a background check every eight years also. **SENATOR SPRAGUE** replied that the Committee does not know the answer to that, whether it is feasible, or if SB 184 assumes that they are doing a background check every eight years.

SENATOR KEITH BALES informed **SENATOR SPRAGUE** that in the testimony concerning SB 184, it was stated that the "Brady Bill" presently requires a background check at least every five years. That is why they have amended SB 184 to every four years. And to answer **SENATOR TROPILA's** question concerning the cost, it would cost very little and is fairly easy to do using the Department of Justice's computer system.

SENATOR GREG BARKUS asked **SENATOR SPRAGUE** if the permit fee was the same cost as before. **Mary Vandebosch** responded that the renewal fee is the same at \$25, and the \$50 permit fee is not affected by SB 184, and neither one is affected by the amendments. The amendments put into the current law the renewal cost as \$25, but now it would be paid every eight years instead of every four.

SENATOR DAN MCGEE restated that the background check occurs every four years, and the renewal of the permit is every eight.

SENATOR DEBBIE SHEA stated the following three major changes that SB 184 makes to the current law: 1) it takes the renewal from four years to eight years, 2) it shows that if a renewal is denied, they have to show cause, and 3) makes the background check every four years.

SENATOR BILL TASH asked if the peace officers were for it now. **SENATOR MCGEE** responded that he does not know how they would respond today with the eight-year permit. The testimony was that they were concerned in not seeing the permit holders periodically, but now they are going to do a background check every four years which means they are going to visit with these individuals even if the individual is not in the room. In the eighth year, the individual is going to come back for the renewal anyway.

SENATOR BARKUS stated that one of the issues that **SENATOR ED BUTCHER** had discussed with him was the added convenience of making an individual's driver's license part of the permit. **SENATOR MCGEE** explained that proposal got so complicated that it does not fit within the title of SB 184. So for now, that issue has done by the wayside.

EXECUTIVE ACTION ON SB 184 (Continued)

Motion/Vote: SENATOR MCGEE moved for a DO PASS on the first Amendment "401". Motion PASSED 10-0.

Motion/Vote: SENATOR MCGEE moved for a DO PASS on the second Amendment "403". Motion PASSED 10-0.

Motion/Vote: SENATOR MCGEE moved that SB 184 DO PASS AS AMENDED AND AMENDED. Motion PASSED 10-0.

EXECUTIVE ACTION ON SB 287

{Tape: 1; Side: A; Approx. Time Counter: starts 26.6}

SENATOR MIKE SPRAGUE explained how the amendments were achieved. The opponents, except the kayak users, got together and debated SB 287 because it is important to the whole funding mechanism. SENATOR SPRAGUE thought it was fair at the charge of \$8.50, but found out money was the issue, so he capitulated in order to keep SB 287 alive. The compromise was to go to \$5 for non-motorized boats, and \$6.50 for motorized boats. This was a fairness issue, and the reason is that motorized boats have to pay the county treasurer every year even if they are not using the boat, and the treasurer's office keeps one dollar of the \$6.50 anyway. SENATOR SPRAGUE explained that he tried to keep SB 287 as fair as possible, and bring everyone on board about it.

{Tape: 1; Side: B}

SENATOR SPRAGUE asked Mary Vandembosch to explain the amendments. Ms. Vandembosch stated that besides the change in the fees, another change is on Page 2, Line 3, which states that the decal must be permanently attached so it can be seen easily from another vessel or the shore. The fee that applies to vessels that are powered by paddle, oar, or sail, exempts the peddle-powered boats. How the fees are used has been changed in two places in the bill. Fifteen percent of the fees that are collected from paddle or sail boats will be used for managing water-based recreation, and up to ten percent will be used for boating and water-safety education enforcement, and the balance can be used for acquiring, developing, maintaining, and operating Fishing Access Sites (FAS) and recreational boat access sites. The Department of Fish, Wildlife, and Parks (FWP) must adopt rules in a negotiation-rule-making process and the rules must be based on surveys taken at the point of decal sales. These changes are in Amendment 8.

Mary Vandenbosch explained the change in the use of the motorized boat fee. Fifty percent of these fees will go to acquiring, maintaining, and operating public motorboat facilities including motorboat accessible Fishing Access Sites. The remaining fifty percent would go to management of water-based education, enforcement, and recreation.

SENATOR MIKE SPRAGUE stated that these percentages were negotiated with the boat users, and not simply decreed by FWP.

SENATOR JOE TROPILA asked if the kayak users were included. **Doug Monger, Administrator, Parks Division, FWP**, explained that how the money will be spent is through the negotiation-rule making process, and the kayak users must be represented as one of the affected parties. All the boat users will have a say on the portions of the fees to be spent on Fishing Access Sites, State Parks, or even kayak-specific recreational needs.

SENATOR BILL TASH asked **Doug Monger** how are the fee adjustments in the amendments going to affect the contingency language we had in the appropriation's subcommittee in regards to enforcement. **Doug Monger** stated that in SB 287, up to fifteen percent of the fees from the non-motorized boats go to river conflict, and contingent language in HB 2 should fix any problems. **SENATOR TASH** then asked **Mr. Monger** what percent of the decal money was for enforcement. **Mr. Monger** stated that on Page 2, Lines 12 through 13, the amendment states that fifteen percent goes to river conflict, and ten percent to enforcement. These percentages have matched Federal dollars at the rate of one-to-one.

SENATOR GREG BARKUS asked **Doug Monger** how are the decals made to be permanent. **Mr. Monger** stated that the 3M Company makes decals that will stick to almost anything but the space shuttle. **SENATOR BARKUS** asked **Mr. Monger** what would be the cost of these decals and tags. **Mr. Monger** stated that from HB 444, the decals are in the range of eight to twelve cents each.

SENATOR BARKUS asked for justification for assessing fees on water vessels that do not use FWP's Fishing Access Sites. There is a problem when FWP can charge fees for services they do not provide such as the access ramps provided free for public use by the rafting companies in Glacier National Park. SB 287 is misguided and leaves many users of the rivers with unanswered questions about what is, and what is not, a violation under this bill. **SENATOR SPRAGUE** responded that SB 287 has been in process for over a year, and the idea is that if everyone uses the water then there is water conflict. The theory is that this is

a fair process. Should only one segment of the boating population be helping to maintain our waterways? These fees will be used for access, conflicts, and weed control, etc. All pay some, whether they use all. A meager five dollars a year appears to be a reasonable fee to charge everyone that uses Montana's waterways. FWP's revenues are falling. This was a Committee bill in the last session, and if we pass SB 287 now, it will take two years for it to go into effect. The earlier we try, the quicker we can turn things around, and it is getting very late to do this.

SENATOR KEN HANSEN stated if following **SENATOR GREG BARKUS'** reasoning on seldom using FWP's Fishing Access Sites then we could say the same about SJR 15, Brush Lake State Park. We may never go to Brush Lake, but still that is part of the money that will be coming from fees that will be implemented. If the \$5 is the issue then if it was \$1.50, it still would be the issue.

SENATOR DAN MCGEE stated that he was going to vote for SB 287 for two reasons: 1) it should make it as far as the Senate Floor, and 2) it is being sponsored by our Committee's Chairman, **SENATOR MIKE SPRAGUE**.

SENATOR BILL TASH said that he respects **SENATOR BARKUS'** stance, but must speak in favor of SB 287 because of his involvement with River Recreation Advisory Committee. SB 287 implements proper identification of the water craft and levels the playing field. It has been more than a year, but at least four years, that there has been river-recreation conflicts, particularly on the Beaverhead and Big Hole Rivers. The river guides and outfitters put a lot of pressures on Montana's river resources.

SENATOR SPRAGUE asked **Doug Monger** if Montana was the only state passing a bill like SB 287. **Mr. Monger** testified that 12 or 15 states are doing this now.

Motion/Vote: **SENATOR DAN MCGEE** moved a DO PASS on Amendment 28701. Motion carried 9-1 with **SENATOR JOE TROPILA** voting no.

Motion/Vote: **SENATOR DAN MCGEE** moved that SB 287 DO PASS AS AMENDED. Motion carried 8-2 with **SENATORS GREG BARKUS** and **DALE MAHLUM** voting no.

EXECUTIVE ACTION ON SB 250

Tape: 2; Side: A; Comments: ALL EXECUTIVE ACTION ON the end of SB 250's Executive Action and all of SB 208's Executive Action, Tape 2 is filed with SB 208

Motion: SENATOR DAN MCGEE moved that SB 250 DO PASS for the purposes of putting on an Amendment.

SENATOR MCGEE explained that SB 250 was the future fisheries bill that would allow the building of ponds in Eastern Montana.

Motion: SENATOR MCGEE moved a DO PASS on AMENDMENT 25001.

SENATOR MCGEE explained that Amendment 25001 strikes the usage in the Title of riparian zones, and strikes the same thing on Page 2, Lines 20 through 22. Having surveyed for conservation easements purposes in his business, SENATOR MCGEE has seen these easement used to tie up the land, so it cannot be used for anything. A person cannot ask to go fishing on a landowner's property, if they put it into some kinds of conservation easements with certain restrictions.

SENATOR MIKE SPRAGUE asked SENATOR MCGEE what was the point of SB 250. SENATOR MCGEE explained that it was to get some ponds into Eastern Montana which he was in favor of.

SENATOR KEITH BALES stated his wholehearted support for the amendment. The main purpose of SB 250 is to get ponds filled with walleye and trout, particularly in Eastern Montana. However, in the negotiating process the additional section about conservation easements was added, which is totally against the agreements first reached when the current law was legislated on May 30, 2003. SENATOR BALES said the more that Mr. Wilson talked, it became apparent that SB 250 was going against farmers and ranchers, and those were the very people the bill needs to attract. These people are the ones that can make these improvements and make the ponds possible. The conservation easement references should be taken out of SB 250. Leaving them in would make SB 250 a dangerous bill and instead of improving the situation, it will hurt the Fisheries Project.

SENATOR MCGEE stated that SENATOR BALES' point was beautiful, and if you read what the language was in current law, it says funds are not going to be used for the acquisition of any interest in land. And what do they put in there, "comma except." So they are saying they are not going to use it for land, but they are going to use it for land.

SENATOR SPRAGUE asked for clarification on how will the land be acquired and controlled in order to keep the banks of the ponds stable. **SENATOR BILL TASH** responded that he has a contract with FWP's Future Fisheries Project, and it is a contract rather than an encumbrance on the land. It is an agreement that has time-specific goals that include stabilization of stream banks and spring creeks. **SENATOR MIKE SPRAGUE** asked if it was a short-term contract, so there would be a return on the investment. **SENATOR BILL TASH** explained that *{Tape: 2; Side: A}* SB 250 takes things too far with the conservation easements, they would be held by a qualified organization because that then is an encumbrance probably in perpetuity. **SENATOR SPRAGUE** asked **SENATOR TASH** how long was your contract for. **SENATOR TASH** said it was for ten years. **SENATOR SPRAGUE** responded that ten years seemed reasonable. **SENATOR TASH** explained that the land stays titled to the owner, and the improvements are cost-shared by the monies that come from HB 546 that make these improvements. The landowners know what good conservation practices are, but how you pay for them becomes the issue. With this amendment, SB 250 is a good bill, worth my support.

Motion/Vote: **SENATOR DALE MAHLUM** moved that SB 250 BE AMENDED. Motion carried 6-4 with **SENATORS KEN HANSEN, TRUDI SCHMIDT, DEBBIE SHEA, and JOE TROPILA** voting no.

Motion/Vote: **SENATOR DAN McGEE** moved that SB 250 DO PASS AS AMENDED. Motion carried 9-1 with **SENATOR KEN HANSEN** voting no.

EXECUTIVE ACTION ON SB 208

Motion: **SENATOR DEBBIE SHEA** moved that SB 208 DO PASS.

Mary Vandenbosch cautioned that Page 3, Lines 7 and 8, may be unconstitutional because the Montana Constitution prohibits special legislation when general legislation would accomplish the purpose. The law already allows FWP to require life preservers under certain conditions. **Ms. Vandenbosch** stated that she could not tell the Committee what a court would decide, but wanted to make the Committee aware of this possibility.

Motion: **SENATOR GREG BARKUS** made a substitute motion on SB 208 to be INDEFINITELY POSTPONED.

SENATOR DEBBIE SHEA stated that while most Montanans are familiar with water safety, many tourists will not be, and what harm would it do to pass SB 208 and help Valley County and save some lives.

SENATOR MIKE SPRAGUE asked **Chris Smith, FWP**, to give an example of how FWP could post signs without passing SB 208 and possibly being unconstitutional. **Mr. Smith** stated that the Committee could write a letter to FWP explaining the intent behind SB 208, and asking the Department to work with the affected parties during the interim to do their best to implement the intent behind the bill without legislative action. The FWP Commission has the authority to direct us to do these things.

SENATOR DEBBIE SHEA asked **Chris Smith** if there would be a greater fiscal impact to Valley County, if these things were done by FWP instead of legislated. **Mr. Smith** responded that the only expense to Valley County would be for the Sheriff to make a trip to Helena to attend an FWP Commission meeting to present his concerns and ideas.

SENATOR KEITH BALES stated that SB 208 should be Indefinitely Postponed and the Senate Fish and Game Committee should write a letter to the Department of Fish, Wildlife, and Parks. The letter should urge FWP to look at all the rivers that might be used during the Lewis and Clark Bicentennial and have FWP establish information, rules, and pamphlets for all areas of concern.

SENATOR MIKE SPRAGUE appointed a subcommittee consisting of **SENATORS BALES, BARKUS** and **SHEA** (**SENATOR SHEA** being the chairperson) to draft a letter to FWP. The drafted letter was completed and sent to FWP on March 11, 2003.

Motion/Vote: **SENATOR GREG BARKUS** moved that SB 208 BE INDEFINITELY POSTPONED. Motion carried 10-0.

ADJOURNMENT

Adjournment: 5:25 P.M.

SEN. MIKE SPRAGUE, Chairman

JANE M. HAYDEN, Secretary

MS/JMH

EXHIBIT (fis36dad)